IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

PRESENT
THE HON'BLE MR JUSTICE R.SUBHASH REDDY
WRIT PETITION NOs : 21574, 21587 of 2006 & 5565 of 2007

Dated 17th April, 2007

WRIT PETITION NO. 21574 OF 2006
Between

S.Noorie …Petitioner

And

Dr.N.T.R. University of Health Sciences,
Vijayawada, Krishna District, rep. By its Registrar, and, ors.

….Respondents.

WRIT PETITION NO. 21587 OF 2006
Between

Arshiya Parveen …..Petitioner.

And

Dr.N.T.R. University of Health Sciences,
Vijayawada, Krishna District, rep. By its Registrar, and, ors.

….Respondents.

WRIT PETITION NO. 5565 OF 2007
Between

Farooq Gazala …..Petitioner.

And

Dr.N.T.R. University of Health Sciences,
Vijayawada, Krishna District, rep. By its Registrar, and, ors.

….Respondents.

HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION NOs : 21574, 21587 of 2006 & 5565 of 2007

COMMON ORDER:

In these Writ Petitions, as common issues on similar set of facts arise for consideration, they are heard together and are being disposed of by this common order.

For the purpose of convenience in disposal of these cases, I refer to the facts narrated in Writ Petition No. 21574 of 2006.

The petitioner is a student of third respondent-college studying Bachelor of Unani Medicine and Surgery course, i.e. B.U.M.S. She joined in the said course in the respondent-college pursuant to the seat allotted by the first respondent in the year 2001. The petitioner was writing III professional examinations of BUMS course, and, on 12-4-2006 she appeared for the examination in the subject of *Amraz-E-Ain-Halaq*. On the said date of examination, a case of malpractice was registered against the petitioner on the ground that the copying material was found written on the backside of the hall-ticket. However, the petitioner was allowed to write rest of the examinations and subsequently, the impugned order is passed based on the recommendations of the Disciplinary Committee pursuant to their meeting held on 27-5-2006, by which, the petitioner was disqualified from appearing in any University examinations for a period of one year

as punishment for use of unfair means during the examinations.

This Writ Petition is filed, mainly, on the ground that no opportunity was given before passing the impugned order and that the matter written on the backside of the hall-ticket is not related to the examination of that day and, in that view of the matter, the respondents have not considered the said aspect while judging the issue and passed the impugned order contrary to the Standing Orders of the University. The learned Counsel for the petitioner has placed reliance on the judgment of a Division Bench of this Court in Writ Appeal Nos.651 and 643 of 2005, dated 25-3-2005.

In the counter affidavit filed on behalf of the respondents, it is stated that the Flying Squad appointed by the University had visited the third respondent-college on 12-4-2006 and a case was registered against the petitioner and five others when they were found copying from the written material on the backside of the hall-ticket. It is stated that the copying material was written on the backside of the hall-ticket and the Special Observer had taken over the hall-ticket where the petitioner had written in small letters and the same was forwarded to the University by the Flying Squad. However, it is admitted that the Principal of the third respondent-College had endorsed in his report that the matter written on the backside of the hall-ticket is not relevant to the examination. With reference to the plea of the petitioner that she was not given opportunity before passing the impugned order, it is stated that the petitioner having submitted in writing admitting that she is guilty of having written on the back side of the hall ticket, it is not open for the petitioner to plead further opportunity. Further, it is stated in the counter affidavit that as per the existing procedure and the Standing Orders, when the written material tallies with the answers in

the answer scripts, the candidate should be punished for a period of two years, but however, as only the copying material was seized from the candidate, she was disqualified for a period of one year as per the Standing Orders.

In this case, it is not in dispute that neither the Disciplinary Committee nor the Registrar, who had passed the impugned order had given notice or opportunity to the petitioner before passing the impugned order. There are Standing Orders framed by the University to deal with the cases of malpractice. Clause 18 of the Standing Orders provides for an opportunity before taking any action against any candidate on the ground of malpractice. Though the respondents have relied on the letter, which is alleged to have been given by the petitioner, but it cannot be a substitute for the opportunity, which is contemplated in the Standing Orders. It is also the case of the petitioners that the matter found written on the backside of the hall-ticket is not related to the examination of that day. In any event, the punishment awarded against the petitioner is contrary to the Standing Orders having regard to the allegations levelled against the petitioner. It is to be noted that, for the nature of allegations made against the petitioner, the punishment is contemplated under Clause 5 of the Standing Order, but, the respondents have imposed punishment as provided under Clause I of the Standing Order. Further, the Division Bench of this Court in the judgment dated 25-3-2005 in Writ Appeal Nos. 651 and 643 of 2005 observed as follows:

> "…..Therefore, what is necessary is that the show cause notice served upon the candidate must disclose that the material found in possession was relevant to the examination or that the candidate had written anything concerned on the question

paper or on the hall ticket. Unless the written material is concerned with that particular paper to be attempted by the candidate or that the written material is relevant to the examination, mere possession, writing on hall ticket or any other material will not be sufficient to find the candidate guilty of unfair means."

In this case, as much as it is not disputed that the impugned order is not preceded by any show cause notice, and, further, the respondents have not examined the issue as to whether the punishment which is contemplated under Clause 5 or Clause 1 attracts having regard to the allegations made against the petitioner, I deem it appropriate to remand the matter back for fresh consideration by the respondents.

Accordingly, the impugned orders in these Writ Petitions are set aside and the matter is remitted back to the respondents for fresh consideration. It is open to the respondents to serve fresh show cause notices on the petitioners, provide opportunity to them and pass appropriate orders as expeditiously as possible. The respondents shall consider whether the petitioners are entitle for the benefit of the result of the III professional examination of BUMS course while passing the orders.

The Writ Petitions are allowed to the extent indicated above. No order as to costs.

JUSTICE R. SUBHASH REDDY

DATE: 17th April, 2007.
Msnr.